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## Appeal Decision

Site visit made on 26 June 2017

**by Alexander Walker MPlan MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 25<sup>th</sup> July 2017**

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**Appeal Ref: APP/R0660/W/17/3172117**

**Land off Mill Lane, Bulkeley SY14 8BL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr M Schofield against the decision of Cheshire East Council.
  - The application Ref 16/6202N, dated 22 December 2016, was refused by notice dated 2 March 2017.
  - The development proposed is 13 dwellings with access off Mill Lane including 5 affordable homes.
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### Decision

1. The appeal is allowed and outline planning permission is granted for 13 dwellings with access off Mill Lane including 5 affordable homes at Land off Mill Lane, Bulkeley SY14 8BL in accordance with the terms of the application, Ref 16/6202N, dated 22 December 2016, subject to the conditions contained in the attached Schedule.

### Procedural Matters

2. The application was submitted in outline, with all matters reserved for future consideration except access. Elevational drawings and a site plan were submitted with the application. Whilst they are not labelled as indicative drawings, given that the appellant has confirmed that, with the exception of access, all matters are reserved, I have considered them as such. I have determined the appeal on the basis of the appellant's submission that appearance, landscaping, scale and layout are reserved for future consideration.
3. A signed and dated section 106 agreement, dated 7 July 2017, was submitted with the appeal. The agreement relates to the provision of affordable housing and education facilities. I shall refer to this later in the Decision.

### Main Issues

4. The main issues are the effect of the development on the character and appearance of the area; whether occupants of the proposed development would have acceptable access to shops and services; and, the effect of the development on the supply of the best and most versatile agricultural land.

## Reasons

### *Character and Appearance*

5. The appeal site is a verdant field located in the open countryside and within a Local Landscape Designation Area. The site lies adjacent to the northern edge of the village of Bulkeley and is accessed directly off Mill Lane. The boundary of the field comprises mature hedging and trees. To the west of the site is a garden nursery and to the east is Mill Lane; beyond these are open fields. To the north is a small field which is a certificated caravan site and to the north of this is a dwelling, beyond which are further open fields. Immediately to the south is Mill Grove, which comprises single-storey and two-storey dwellings. Notwithstanding its proximity to neighbouring residential development, the site is read as part of the open countryside and makes a positive contribution to the openness and rural character of the area.
6. The site is located within the Beeston/Peckforton/Bolesworth/Bickerton Hills Local Landscape Designation Area (LLDA). The Cheshire East: local landscape Designations document describes the LLDA as a distinctive wooded sandstone rock outcrop that curves in a northeast-southeast orientation along the line of the borough boundary. The wooded hills of Bulkeley Hill to the north are visible from the appeal site. These hills are in marked contrast to the surrounding flat surroundings of the Cheshire Plains.
7. A Landscape and Visual Impact Assessment (LVIA) has been undertaken by Design Construction Management Services Ltd, dated 7 October 2014, which accompanied the application submission. The LVIA concludes that the proposal would not cause unacceptable visual harm or introduce incongruous landscape elements. Furthermore, it would not cause the disturbance of the landscape elements that contribute to local distinctiveness or historic elements which contribute significantly to landscape character and quality, such as field and settlement patterns.
8. The Council argues that the LVIA is incorrect in a number of its findings. These include the landscape not being susceptible to, or likely to be harmed by the proposed development; that the landscape effect would be moderate/not significant; and, that the proposal could make a positive landscape change to the village. Furthermore, they consider that the significance of visual effect would be greater from the viewpoints identified in the LVIA than the assessment indicates.
9. The site is on the urban fringe of the adjacent settlement and given the size of the plot it would allow low density housing that would assimilate well into the existing pattern of neighbouring development in the village. Whilst it forms part of the open countryside, it is well screened with extensive vegetation on all boundaries, clearly dividing it from adjacent fields. In addition, the western boundary would form a continuation of the western boundary of Mill Grove, and given its size, shape and location, the site would represent a logical extension of the village.
10. Nevertheless, I do not consider that the introduction of 13 dwellings on an undeveloped open field would make a positive landscape change to the village, even with additional landscaping. The development would result in an urbanising effect, extending the existing urban development of the village into the open countryside eroding the rural character of the area. Given the size of

the site and its relationship to the adjacent residential development I consider that this would result in moderate harm to the character and appearance of the landscape.

11. Policy NE2 of the Borough of Crewe and Nantwich Replacement Local Plan (CNLP) 2011 restricts development in the open countryside, only allowing development essential for certain purposes. As the proposal lies within the open countryside and does not fall within any of the exceptions, it conflicts with this policy.
12. It would also conflict with Saved Policy NE3 of the LP, which, amongst other matters, seeks to ensure that housing development in designated Areas of Special County Value (ASCV) (which both parties confirm are now referred to as LLDAs) does not have an adverse impact on the character or features for which the ASCV has been designated. Furthermore, it would fail to accord with Policy SE4 of the Cheshire East Local Plan Strategy (CELP) 2014, which seeks to protect LLDAs from development which is likely to have an adverse effect on its character.

#### *Accessibility*

13. The services and facilities within Bulkeley are limited to a church. There is also a public house approximately 0.7 miles from the site which also contains a shop that provides basic provisions. The nearest school is Bickerton Holy Trinity CE Primary School, which is approximately 2 miles from the site. Therefore, whilst there are limited services and facilities within Bulkeley, basic provisions are available within reasonable walking distance without the need for the use of a private car.
14. Furthermore, the site is within proximity of a bus service that provides access to the wider area including Peckforton, Bunbury, Beeston, Huxley and the city of Chester that offer a wide range of shops, services, facilities and employment opportunities. This provides a realistic alternative to the private car. Nevertheless, the service is not particularly frequent which means that there is still likely to be a reliance on the private motor car. This would result in negative environmental effects in terms of the use of natural resources and negative social effects in terms of accessible local services.
15. The Council has referred me to an appeal decision regarding The Stables, Peckforton. Whilst I note the extract from the Inspector's decision, there are no details of what the proposal was for or its location. Therefore, I cannot draw any direct comparison with the appeal before me.
16. I therefore conclude that the proposal would not provide a suitable site for housing, having regard to whether future occupiers would have reasonable access to shops, facilities and services. Development in this location would lead to reliance on private transport contrary to the aims of the Framework. I attribute moderate weight to this matter.

#### *Loss of Agricultural Land*

17. Paragraph 112 of the National Planning Policy Framework (the Framework) states that local planning authorities should take into account the economic and other benefits of the BMVAL. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.

18. Similarly, Saved Policy NE12 of the CNLP seeks to protect the BMVAL. It states that development will not be permitted unless the need for the development is supported in the local plan; it cannot be demonstrated that the development proposed cannot be accommodated on land of lower agricultural quality, derelict or non-agricultural land; or, other sustainability considerations suggest that the use of higher quality agricultural land is preferable to the use of poorer quality agricultural land.
19. The appeal site is made up of Grade 2 Agricultural Land which represents part of the best and most versatile agricultural land (BMVAL). The soil analysis carried out by Lancorp Laboratories, dated 6 November 2015 identifies that the soil is well-graded gravelly sand and is deficient in a number of minerals for it to be used as grazed grass for cattle. Therefore, whilst the appeal site does form part of the BMVAL, the soil analysis suggests that it is not high quality agricultural land. There is no substantive evidence before me to the contrary. Nevertheless, there is no indication within the analysis that the site should no longer form part of the BMVAL.
20. The appellant has referred me to an appeal<sup>1</sup> whereby the Inspector noted that the Council indicated that it is likely that greenfield sites, including agricultural land, some of which may be BMVAL, will have to be developed. She concluded that the loss of the BMVAL would, at best, be modest, taking account the general quality of agricultural land across the county. There is no evidence to suggest that this is no longer the case.
21. Therefore, I find that given the evidential low quality of the soil on the appeal site; that BMVAL land is likely to be developed in order to meet the Council's housing requirements; and, taking account of the general quality of agricultural land across the County, I find that the appeal proposal would have a limited effect on the BMVAL. Nevertheless, it would conflict with the requirements of saved Policy NE12, albeit this conflict would be limited.

### **Other Matters**

22. The planning obligations in the s106 agreement have to meet the tests in Community Infrastructure Levy Regulations (CIL) Regulation 122 in order for them to be taken into account in my determination of this appeal. These tests are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonable related in scale and kind to the development. These tests are also identical to those set out in paragraph 204 of the Framework.
23. The S106 Agreement would secure at least five on-site affordable houses and a financial contribution of £32,685 towards the provision of a classroom and/or additional or alternative accommodation. From the evidence before me, I am satisfied that the planning obligations meet the tests in CIL Regulation 122 and paragraph 204 of the Framework.

### **Planning Balance and Conclusion**

24. Section 38 (6) of the Planning and Compulsory Purchase Act, 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework does not change the statutory status of the development plan as the starting point for the

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<sup>1</sup> Appeal Ref APP/R0660 /A/13/2204723

decision. This has been confirmed by the Supreme Court<sup>2</sup> in that the development plan has primacy in the determination of planning applications. Nevertheless, the Framework is a material consideration. As the Framework is the most up to date national policy, I attach it considerable weight.

25. The Council confirms that they cannot demonstrate a five year supply of deliverable housing sites. There is no indication of what the shortfall is. In accordance with paragraph 49 of the Framework, relevant policies for the supply of housing should be considered out of date. I note that the Council are taking steps to address the shortfall and the imminent adoption of the Council's emerging local plan. Nevertheless, paragraph 14, bullet 4 of the Framework is engaged.
26. The proposal would provide 13 dwellings, 5 of which would be affordable dwellings. I have not been presented with any evidence identifying what the shortfall in the housing supply is. Paragraph 47 of the Framework seeks to boost significantly the supply of housing. Therefore, I find that the proposal would make a significant contribution towards boosting the supply of housing in the County. In addition, it would make a significant contribution towards the supply of affordable housing, exceeding the typical requirements of 35%.
27. I have found that the proposal would have moderate harm on the character and appearance of the area and would conflict with the objectives of Saved Policy NE2. Furthermore, I have attributed moderate weight to the harm it would have in respect of the environmental effect it would have due to its lack of accessibility to shops, services and facilities. In addition, it would harm the supply of BMVAL, albeit this harm would be limited. Therefore the proposal conflicts with the development plan.
28. However, whilst it is finely balanced, these harms do not significantly and demonstrably outweigh the positive contribution the proposal would make towards the shortfall in housing provision when assessed against the policies in the Framework taken as a whole. Therefore in accordance with paragraph 14 of the Framework, planning permission should be granted.

### **Conditions**

29. I have had regard to the various conditions that have been suggested by the Council. For the avoidance of doubt it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
30. In the interests of protecting the character and appearance of the area, a condition is necessary to safeguard retained trees and hedgerows.
31. In the interests of safeguarding protected species, conditions are necessary regarding the provision of Habitat Buffer Zones, gaps for hedgehogs and restricting site clearance to outside the bird breeding season.
32. In the interests of protecting the living conditions of neighbouring residents, a condition is necessary regarding pile-driving operations. Furthermore, in the interests of public health a condition is necessary regarding foul and surface water drainage.

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<sup>2</sup> Suffolk Coastal District Council v Hopkins Homes Ltd and another, Richborough Estates Partnership LLP and another v Cheshire East Borough Council, United Kingdom Supreme Court UKSC 37 2017

33. Furthermore, in the interests of reducing carbon emissions a condition is necessary requiring the provision of Electric Vehicle infrastructure.
34. It is not necessary to impose a condition regarding ground and slab levels, materials, boundary treatments or landscaping as these fall within the reserved matters.
35. It is essential that the requirements of conditions 5 and 10 are agreed prior to the development commencing to ensure an acceptable form of development in respect of safeguarding the character and appearance of the area and public health.

### **Conclusion**

36. For the reasons given above, having regard to all matters raised and assessed against the policies in the Framework taken as a whole, the appeal is allowed.

*Alexander Walker*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: 6106-18.
- 5) No development shall take place until a scheme for the protection of retained trees and hedgerows has been implemented in accordance with details to be submitted to and approved in writing by the LPA. The scheme shall be maintained until all equipment, machinery and surplus materials have been removed from the site. No excavation, storage of materials or machinery, parking of vehicles, deposit of soil or rubble, lighting of fires, or disposal of liquids shall take place within any area identified for the protection of retained trees and hedgerows in the scheme. If any retained tree or hedgerow is removed, uprooted or destroyed or dies within a period of 5 years from the completion of the development, it shall be replaced in the next planting season with another tree or hedge plant of similar size and species unless the LPA gives written approval to any variation.
- 6) Habitat Buffer Zones along the northern and western boundaries of the application site and bat boxes shall be provided in accordance with the

recommendations of section 7.3.1 and 7.3.2 of the submitted Bat Activity and Habitat Assessment dated August 2016.

- 7) Gaps for hedgehogs shall be incorporated into any garden or boundary fencing. The gaps shall be 10cm by 15cm and located at least every 5m.
- 8) No site clearance works shall take place during the bird breeding season (1 March – 31 August inclusive).
- 9) Details of the method, timing and duration of any pile-driving operations shall be submitted to and approved in writing by the local planning authority before any such works take place. Pile-driving shall only take place in accordance with the approved details.
- 10) No development shall take place until a scheme for the provision of foul and surface water drainage works has been submitted to and approved in writing by the LPA. None of the dwellings hereby approved shall be occupied until the drainage works have been provided in accordance with the approved scheme.
- 11) The developer shall provide Electric Vehicle Infrastructure to the following specification:
  - Overnight EVP for each dwelling with dedicated off road parking (30A independent circuit preferred to allow fast charging capability)

Richborough Estates